

ARIZONA EVIDENCE REPORTER

2013
CUMULATIVE
EDITION

INCLUDING THE
NEW ARIZONA RULES OF EVIDENCE
EFFECTIVE JANUARY 1, 2012
AND THE COMMENTS TO THE 2012 AMENDMENTS

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ARTICLE 1. GENERAL PROVISIONS

Rule 101. Scope; Definitions.

(a) **Scope.** These rules apply to proceedings in courts in the State of Arizona. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101.

(b) **Definitions.** In these rules:

- (1) “civil case” means a civil action or proceeding;
- (2) “criminal case” includes a criminal proceeding;
- (3) “public office” includes a public agency;
- (4) “record” includes a memorandum, report, or data compilation;
- (5) a “rule prescribed by the Supreme Court” means a rule adopted by the Arizona Supreme Court; and
- (6) a reference to any kind of written material or any other medium includes electronically stored information.

Comment to 2012 Amendment

The language of Rule 101 has been amended, and definitions have been added, to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Comment to Original 1977 Rule

These rules apply in all courts, record and nonrecord, in Arizona.

Cases

101.003 The Arizona Rules of Evidence govern proceedings in courts in the State of Arizona.

State v. Campoy (Crockwell), 220 Ariz. 539, 207 P.3d 792, ¶26 n.5 (Ct App. 2009) (court noted that trial court may have based evidentiary rulings on principles of “fundamental fairness”; court stated that supreme court rules govern admissibility of evidence).

101.005 Different tests should not apply in civil and criminal cases; to the contrary, rules determining the competency of evidence should apply across the board, whether the cases is civil or criminal.

Logerquist v. McVey (Danforth), 196 Ariz. 470, 1 P.3d 113, ¶¶ 41–42 (2000) (court analyzed *Barefoot v. Estelle* and *Daubert/Joiner/Kumho* and concluded it was impossible to reconcile *Kumho* and *Barefoot*, and raised possibility the United States Supreme Court intended to interpret Rule 702 differently in criminal cases, but stated Arizona Rules of Evidence should apply the same in civil and criminal cases).

101.015 The Arizona Supreme Court does not have the authority to delegate to the Administrative Director the authority to make rules on the admissibility of evidence.

In re Jonah T., 196 Ariz. 204, 994 P.2d 1019, ¶¶ 9–21 (Ct. App. 1999) (Arizona Supreme Court adopted Administrative Order 95–20, which authorized the Administrative Director of the Court to distribute certain policies and procedures for drug testing; the procedure adopted provided that if an immuno-assay test showed that a juvenile tested positive for drugs but the

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juvenile denied using drugs, those test results were not admissible unless the positive result was confirmed by a subsequent gas chromatography/mass spectrometry test; court held the administrative procedure conflicted with the Rules of Evidence, and that the administrative procedure could not negate the applicable Rule of Evidence).

101.020 The Arizona Legislature is permitted to enact statutory procedural rules that are reasonable and workable and that supplement the rules promulgated by the Arizona Supreme Court.

David G. v. Pollard, 207 Ariz. 308, 86 P.3d 364, ¶¶ 15–17 (2004) (court held that A.R.S. § 8–323, which sets forth procedure for adjudicating certain offenses listed in A.R.S. § 8–323(B), supplements and does not conflict with Arizona Rules of Juvenile Procedure).

State v. Vincent, 159 Ariz. 418, 768 P.2d 150 (1989) (A.R.S. § 13–4253, which allows for the presentation of videotaped testimony, is constitutional and admission of such testimony is permissible as long as the trial court makes the necessary findings).

Jilly v. Rayes (Carter), 221 Ariz. 40, 209 P.3d 176, ¶¶ 1–8 (Ct. App. 2009) (court held that A.R.S. § 12–2603, which provides that plaintiff suing health care professional must certify whether or not expert opinion testimony is necessary to prove health care professional’s standard of care or liability, and if expert opinion testimony is necessary, requires service of “preliminary expert opinion affidavit” with initial disclosures, did not conflict with any court rule, and thus was constitutional).

Bertleson v. Tierney, 204 Ariz. 124, 60 P.3d 703, ¶¶ 20–22 (Ct. App. 2002) (A.R.S. § 12–2602, which deals with notice whether expert testimony will be necessary in claim against licensed professional supplements existing procedural rules and is reasonable and workable, and therefore constitutional).

State v. Gilfillan, 196 Ariz. 396, 998 P.2d 1069, ¶¶ 17–28 (Ct. App. 2000) (court held A.R.S. § 13–1421, which prescribes when sexual assault victim’s prior sexual conduct may be admitted in evidence, was reasonable and workable supplement to court’s procedural rules and thus was permissible statutory rule of procedure).

Martin v. Reinstein, 195 Ariz. 293, 987 P.2d 779, ¶¶ 104–07 (Ct. App. 1999) (Arizona’s Sexually Violent Persons Act provides that Arizona Rules of Evidence apply to proceedings; court held this was reasonable and workable and supplemented rules promulgated by Arizona Supreme Court, and thus was permissible).

In re Maricopa Cty. Juv. No. JD–6123, 191 Ariz. 384, 956 P.2d 511 (Ct. App. 1997) (Juvenile Rule 16.1(f) is a reasonable and workable supplement to the Arizona Rules of Evidence).

State v. Nibiser, 191 Ariz. 199, 953 P.2d 1252 (Ct. App. 1997) (A.R.S. § 28–692(F), which provides method for establishing foundation for breath test results, was a reasonable and workable supplement to the rules).

101.025 Although the Arizona Legislature is permitted to enact statutory rules that are reasonable and workable and that supplement the rules promulgated by the Arizona Supreme Court, when a conflict arises, or a statutory rule tends to engulf a rule that the court has promulgated, the court rule will prevail.

GENERAL PROVISIONS

Lear v. Fields, 226 Ariz. 226, 245 P.3d 911, ¶¶ 14–22 (Ct. App. 2011) (A.R.S. § 12–2203 (Arizona *Daubert*) does not alter any substantive law, but instead is attempt to control admissibility of expert witness testimony in all cases and such controls procedural matters; because it conflicts with existing rules of evidence, it is unconstitutional).

State v. Taylor, 196 Ariz. 584, 2 P.3d 674, ¶¶ 4–11 (Ct. App. 1999) (A.R.S. § 13–4252 allows for admission of pretrial videotaped statement made by minor, this statute is both more restrictive and less restrictive than existing hearsay exceptions, and so it engulfs Rules of Evidence and is therefore unconstitutional).

101.027 Although a statute may have the effect of precluding certain evidence and may appear to be in conflict with a court rule, if the statute in question controls a matter of substantive law, then the statute will prevail over the court rule.

** *Baker v. University Physicians Health*, ___ Ariz. ___, 296 P.3d 42, ¶ 52 (2013) (court declines to reconsider holding in *Seisinger*).

Seisinger v. Siebel, 220 Ariz. 85, 203 P.3d 483, ¶¶ 22–44 (2009) (defendant moved to preclude testimony of plaintiff's expert witness; trial court ruled that plaintiff's expert witness did not meet requirements of A.R.S. § 12–2604, which provides additional qualifications for expert witness in medical malpractice actions, and granted defendant's motion; court held that A.R.S. § 12–2604 set forth what was required for plaintiff to meet burden of proof in medical malpractice case and thus was matter of substantive law, which meant statute would prevail over contrary court rule).

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